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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,391	08/26/2003	Charles Lee Asplin	ASPL-008	6074
21877	7590	06/20/2006	EXAMINER	
CURTIS V HARR P O BOX 2842 FARGO, ND 581082842			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER

3746

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/649,391	<b>Applicant(s)</b> ASPLIN, CHARLES LEE	
	<b>Examiner</b> Charles G. Freay	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-13 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 14 is/are rejected.
- 7) ☒ Claim(s) 4-8 and 15-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to the amendment of April 17, 2006. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague and indefinite because in claim 1 line 12 there is no antecedent basis for "said plural pump cylinders". In line 6 the claim sets forth "a pump chamber and a pump ram". The examiner has considered the claim as if a single pump chamber were claimed. The examiner further notes that claim 4 positively claims plural pump chambers and rams.

#### ***Claim Rejections - 35 USC § 103***

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zollner et al in view of McArthur et al (USPN 5,634,574).

Zollner et al disclose a viscous material pump having a material bin having sloping sides at the bottom of which an auger (36) is mounted. The auger is driven by a hydraulic motor (38) of variable speed. The auger feeds a pump assembly having a pump chamber (10,12) having a pump ram (14,16) which is driven by a hydraulic cylinder (22,24), and a one-way valve assembly (26,28) feeds to a delivery hose (56). Zollner et al do not disclose a pump ram cap fixedly attaching the hydraulic cylinder ram and the pump ram to operate in unison. McArthur et al discloses a viscous material pump having a pump ram (200,210) which pumps material from a material bin (10). The pump ram is connected to hydraulic cylinder rams (inside cylinders 52,54 in Fig. 14) and connected to the pump ram by a pump ram cap (146). At the time of the invention it would have been obvious to one of ordinary skill in the art to one of ordinary skill in the art to connect the pump ram and the hydraulic ram through a pump ram cap as a well known connection arrangement between the drive and the pump which allows for an axially compact connection.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zollner et al in view McArthur et al as set forth in the rejection of claim 2 and further in view of Stephens (USPN 5,141,363)

As set forth above Zollner et al in view of McArthur et al discloses the invention substantially as claimed. Zollner et al in view of McArthur et al do not disclose that the auger is reversible. Stephens discloses a similar viscous material pumping system having an auger (82,84) mounted in the bottom of a bin (see Fig. 7) which feeds a pump

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(95) that delivers cement from a hose (62) to a desired location. Stephens also sets forth that the hydraulic drive motor (86) from the auger is reversible (see col. 16 lines 20-25). At the time of the invention it would have been obvious to one of ordinary skill in the art to make the auger of Zollner et al reversibly driven in order to provide for easy cleanout of the hopper.

Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zollner et al in view of McArthur et al as set forth in the rejection of claim 1 and further in view of Zimmerman.

As set forth above Zollner et al in view of McArthur et al discloses the invention substantially as claimed. Zollner et al in view of McArthur et al do not disclose that there is a hydraulic pump connected to the auger and the hydraulic cylinder through a manifold. As shown in Fig. 1, Zimmerman discloses a similar auger and reciprocating pump device. As shown in Fig. 3 there is a pump (128) connected in a driving relationship to the hydraulic motors (50, 72) of the pump system through a manifold (X,Y). At the time of the invention it would have been obvious to one of ordinary skill in the art to use a hydraulic drive system as disclosed in Zimmerman to drive the hydraulic motors of Zollner et al in order to provide hydraulic power from a single drive pump.

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***Allowable Subject Matter***

Claims 9-13 are allowed.

Claims 4-8 and 15-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-3 and 14 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Faro et al, Brown et al, Weaver et al and Menier disclose hydraulic ram and pump ram arrangements which are connected in unison by a pump ram cap.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
June 11, 2006